

19868

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20006-2973

OF COUNSEL
URBAN A. LESTER

(202) 393-2266

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January 3, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), and the regulations thereunder are two (2) copies of a Schedule to Master Lease Agreement, dated as of December 21, 1995, a primary document.

The names and addresses of the parties to the enclosed document are:

Lessor: U.S. Bancorp Leasing & Financial
825 N.E. Multnomah, Suite 800
Portland, Oregon 97232

Lessee: Case Farms of North Carolina, Inc.
PO Box 308
Morganton, North Carolina 28655

A description of the railroad equipment covered by the enclosed document is one (1) locomotive described in Paragraph (a) of the Schedule to Master Lease Agreement.

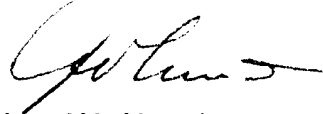
Country Club - Portland

Mr. Vernon A. Williams
January 3, 1996
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Also enclosed is a check in the amount of \$21.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. W. Alvord", written in dark ink.

Robert W. Alvord

RWA/bg
Enclosures



Interstate Commerce Commission
Washington, D.C. 20423-0001

1/3/96

Office Of The Secretary

Robert W. Alvord
Alvord And Alvord
918 Sixteenth Street, NW., Ste. 200
Washington, DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/3/96 at 1:05PM, and assigned recordation number(s). 19868, 19869, 19870, 14844-F, 14845-F and 14846-F.

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

\$ 126.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

SCHEDULE TO MASTER LEASE AGREEMENT

19868

Schedule Number 10813.002

THIS SCHEDULE made as of December 21, 1995, by and between U.S. BANCORP LEASING & FINANCIAL ("Lessor"), having its principal place of business at 825 N.E. Multnomah, Suite 800, Portland, Oregon 97232, and Case Farms of North Carolina, Inc. ("Lessee"), having its principal place of business located at P.O. Box 308, Morganton, North Carolina 28655, to the Master Lease Agreement dated as of November 1, 1995 between the Lessee and the Lessor (the "Lease"). Capitalized terms used but not defined herein are used with the respective meanings specified in the Lease.

LESSOR AND LESSEE HEREBY COVENANT AND AGREE AS FOLLOWS:

- (a) The following specified equipment (the "Property") is hereby made and constituted Property for all purposes pursuant to the Lease:

one (1) reconditioned & repowered General Electric Class B-B-140/140-4GE748 80 ton Locomotive with used Cummins 855NTC-290 naturally aspirated engine. Each of the above items are complete as equipped including, but not limited to, all attachments & replacements relating thereto.

- (b) The cost of the Property is ~~\$199,975.72~~ **\$201,475.72**

Please Initial Here: *[Signature]*

- (c) This Schedule shall commence on January 20, 1996 and shall continue for eighty-four (84) months thereafter.

- (d) Lessee shall owe eighty-four (84) basic monthly rental payments in arrears each in the amount of ~~\$2,923.59~~ **\$2945.51** (plus applicable sales/use taxes). The first such payment shall be due on February 20, 1996 and shall continue on the same day of each month thereafter until the end of the term of this Schedule. In addition, Lessee shall pay daily pro rata rental in the amount of \$97.46 per day (plus applicable sales/use taxes) from the date on which Lessee executes a Delivery and Acceptance Certificate for the Property through January 19, 1996. Such daily pro rata rental shall be due and payable upon execution of Delivery and Acceptance Certificate for the Property.

- (e) The Property will be installed or stored at the following address: 121 Rand Street, Morganton, North Carolina 28655, COUNTY: Burke;

- (f) The record owner of the premises at which the Property will be installed or stored is ;

1. **TITLE PASSAGE.** a. As long as no event of default has occurred and is continuing, Lessee shall have the option to purchase all, but not part, of the Property at the end of the Term hereof or any renewal thereof (the "Option"). The Option may only be exercised by Lessee by written notice of such exercise to Lessor, which notice must be received by Lessor not later than one hundred eighty (180) days prior to the last day of the Term. Payment of the Purchase Price must be received by Lessor on or before the last day of the Term.

b. The purchase price (the "Purchase Price") for the Property shall be the greater of 1) \$39,995.15 (which amount Lessor and Lessee estimate will be the fair market value of the Property at the end of the Term) or 2) the then fair market value of the Property at the time of such exercise as mutually agreed between Lessor and Lessee. In the event such parties cannot reach an agreement thereon after good faith negotiation, the Purchase Price shall be the value determined by an appraisal of the Property made by a reputable independent equipment appraiser certified for the type of Property being appraised. The appraiser shall be selected by Lessor and reasonably acceptable to Lessee, and the cost of the appraisal shall be paid by Lessee.

c. Upon receipt of payment of the Purchase Price together with any and all applicable sales or other taxes due in connection therewith, and any and all remaining sums or other amounts payable under this Schedule, Lessor shall transfer all its right, title and interest in and to the Property to Lessee. The Property shall be transferred "As Is" and "Where Is" without any express or implied representations or warranties.

d. Should Lessee fail to exercise the Option in accordance with its terms, then Lessor, at its sole option, shall have the right to: a) declare the Option terminated and demand immediate return of the Property and pay a return fee of \$19,997.57; or, b) extend the Term for an additional six (6) months (the "Extended Term"). Should Lessor elect to extend the Term, Lessee shall be irrevocably obligated to remit basic monthly rent for the period beginning on the day immediately succeeding the last day of the original Term (the "Holdover Date") and ending at the end of the sixth (6) month thereafter. A payment of such rent shall be due on the Holdover Date and on the same day of each consecutive month thereafter. Each payment of such rent shall be in the amount of the basic monthly rent for the last month of the Term in accordance with the provisions of this Schedule. All Lessee's other obligations under the Lease shall remain in full force and effect for so long as Lessee shall continue to possess the Property. Upon the expiration of each Extended Term, Lessor, at its sole option, shall have the right to: a) permit Lessee to exercise the Option in accordance with its terms; b) declare the Option terminated and demand immediate return of the Property and pay a return fee of \$19,997.57; or, c) extend the Term for an additional six (6) month Extended Term. Any and all rental payments pursuant to this Paragraph shall be deemed for all intents and purposes to be payments for possession and use of the Property after the expiration of the Term, and shall not be credited to any other obligation of Lessee to Lessor. Lessor's invoicing and/or accepting any such payment shall not give rise to any right, title or interest of Lessee other than to possession and use of the Property during the period to which such rent applies in accordance with this Paragraph. The aforesaid right to charge Lessee rent for possession and use of the Property is not in limitation or derogation of any of Lessor's rights pursuant to the Lease.

2. MAINTENANCE, USAGE AND RETURN PROVISIONS. The Property shall be returned structurally sound, within manufacturer's accepted tolerances in all material respects, and shall be in compliance with such maintenance and repair standards and procedures as are set forth in the manufacturer's manual for such Property.

The engines shall be able to pull their full, rated load under normal operating conditions without excessive exhaust or oil leakage; there shall be no water or excess metal debris or other related materials in the oil supply nor oil in the cooling system, and the engines shall be in efficient operating condition as determined by an engine oil analysis, general health test or similar evaluation procedure performed by the engine manufacturer, or its representative, at Lessee's expense. All hydraulic cylinders, pumps and hoses shall be in operating condition and free of leaks under normal operating pressure.

If any item of Property is originally equipped with tires, each such item shall be returned with all tires installed and operable thereon, being of the same type and manufacturer (i.e. matched) and with each having 50%, or the manufacturer's designated half-life or more, tread-life remaining. Lessee shall be charged (prorated) for any portion of tread-life that is worn beyond the designated half-life on each tire. The charge will be the cost as determined by the manufacturer, or its representative, that would replace the tread to the specified, designated, 50% half-life tread depth.

If any item of Property includes a crawler undercarriage, such item shall be returned with at least 50% remaining life, as designated by the manufacturer, on the undercarriage and tracks. Lessee shall be charged (prorated) for any portion of undercarriage or track life that is worn beyond the designated 50% remaining life. The charge shall be the cost as determined by the manufacturer, or its representative, that would replace the undercarriage or tracks to the specified 50% remaining life.

The rental payable under the Lease is based on average monthly usage of the Property of 46 hours per month as determined by the hour meter attached to each unit of Property. If such meter becomes inoperable, Lessee shall immediately repair such meter, and shall notify Lessor immediately of such event and of the hours of usage during the time such meter was inoperable. For each hour of use in excess of an average of 46 hours per month, Lessee shall pay to Lessor additional rent at the pro rated amount of the average monthly scheduled rental. Lessee shall pay such additional rent on the final day of the Lease Term.

Lessee shall maintain the Property in safe and effective operating condition to handle fully rated loads, keep the Property clean, use and operate the Property within its rated capacity, and notify Lessor immediately of any accident affecting the Property.

At the end of the Lease term, the Property shall be returned with frame, structural members, and accessories structurally sound, without breaks or cracks. Engine, hydraulics, and transmission shall operate properly at fully rated loads. Transmissions shall shift properly at rated loads and speeds. Mechanical drive trains, differentials and final drives shall be in good condition and operate quietly without vibrations or leaks. Tires shall be returned in recappable condition and track components shall have at least 50% wear remaining. All ground engaging tools (buckets, blades, rippers) and cabs, canopies, enclosures, lights and other accessories shall be in good condition and appearance. All components shall have been recently

served, following the manufacturer's written operating and maintenance procedures indicated in operator's and service manuals furnished with each piece of Property, periodic adjustments and inspections performed, and all lubricants and hydraulic oils changed. Lessee shall initiate and retain written records of preventive maintenance and repairs indicating date and hour meter readings and verified by parts invoices. Lessee shall utilize a lube oil sampling test program provided by oil supplier or independent laboratory, retain written records of such reports and promptly perform any repairs indicated as required by such reports.

Copies of all reports shall be provided to Lessor on request.

3. **DEPRECIATION.** Lessor will be entitled to modified accelerated cost recovery depreciation based on 100% of Property Cost using the 200% declining balance method, switching to straight line, for 7 year Property, and zero salvage value.

IN WITNESS WHEREOF, the Lessor and the Lessee have each caused this Schedule to be duly executed as of the day and year first above written.

Case Farms of North Carolina, Inc.

By: Michael Popowycz
Michael Popowycz
Chief Financial Officer

U.S. BANCORP LEASING & FINANCIAL

By: [Signature]
An Authorized Officer Thereof

CORPORATE ACKNOWLEDGMENT

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

On this 28th day of December, 1995, before me, the undersigned Notary Public, personally appeared Michael Popowycz, Chief Financial Officer of Case Farms of North Carolina, Inc., and known to me to be an authorized agent of the corporation that executed the Schedule to Master Lease Agreement ("Schedule") and acknowledged the Schedule to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute this Schedule and in fact executed the Schedule on behalf of the corporation.

By: Linda K. Robertson Residing MOORESVILLE, NORTH CAROLINA

Notary Public in and for the State of NORTH CAROLINA My commission expires July 26, 1998

Address for All Notices:
U. S. BANCORP LEASING & FINANCIAL
825 N.E. Multnomah, Suite 800
Portland, Oregon 97232

Machine Tool Finance Group
(800) 225-8029 (503) 797-0222

General Equipment Group
(800) 253-3468 (503) 797-3200